FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 212/2007
(*Kondabai wd/o Arjuna Ingole & 4 others* **VERSUS** *Bhiwa @ Bhiwasan Kadtu Ingole***)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri Najbile, Advocate for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 9th July, 2007.

Heard Shri Najbile, the learned counsel for the appellant.

The appellant is the original defendant. A suit was filed by the plaintiff for partition and separate possession and for his half share in the suit property. According to the plaintiff, since the defendant/appellant was the Karta of the joint family property, after the death of their father, the defendant took all the affairs in his own hands. It is the plaintiff's case that being the Karta of the joint family, the defendant purchased several field properties in his name during the period ranging from 1963 to 1964 from joint family income.

The defendant denied the case of the plaintiff and further pleaded that the property was purchased by the defendant from his own income and not from the funds flowing from the joint family property.

On an appreciation of the material evidence on record, the trial Court held that the plaintiff had proved that the suit property was purchased by the

defendant in his name out of the joint family income.

However, according to the trial Court, plaintiff failed to prove that in view of family arrangement he became absolute owner of the residential house left behind by the father of the plaintiff and the defendant. The trial Court, therefore, decreed the suit of the plaintiff for partition and separate possession of his half share of the suit property. The findings recorded by the trial Court were upheld by the appellate Court.

The findings of both the Courts are pure findings of facts and do not give rise to any substantial question of law. The only submission made on behalf of the counsel for the appellant is that plaintiff Bhiwa was not major at the time of purchase of some of the suit properties, and therefore, he could not have claimed to be the joint owner of the suit property as he was then a minor. This submission is, however, liable to be discarded as the plaintiff had categorically pleaded that the defendant had purchased the suit property in his own name out of joint family income and it was nobody's case that the plaintiff could not have purchased the suit property being a minor at the relevant time. In fact, both the Courts have considered the evidence on record to hold that there was absolutely nothing on record to show that the property was purchased by the defendant from his own income.

Since the findings recorded by both the

Courts are pure findings of fact and do not give rise to any substantial question of law, the second appeal is dismissed with no order as to costs.

JUDGE

APTE